BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

DOCKET NO. UNDOCKETED

In the Matter of

REGULATORY IMPLICATIONS and
IMPLEMENTATION OF FASB 143
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PROCEEDINGS: WORKSHOP

CONDUCTED BY: TIM DEVLIN
Director, Economic Regulation

DATE: Thursday, September 19, 2002

TIME: Commenced at 9:30 a.m.
Concluded at 10:40 a.m.

PLACE: Betty Easley Conference Center
Room 152
4075 Esplanade Way
Tallahassee, Florida

REPORTED BY: JANE FAUROT, RPR
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IN ATTENDANCE:

CAROLYN BERMUDEZ, representing City Gas Company of Florida.

DIANE BLOOM, representing BellSouth.

JEFF HANDLEY, representing TDS Telecom.

MELISSA POWERS, representing Indiantown Gas.

DON ROFF, representing Deloitte and Touche.

LEE L. WILLIS, RICHARD WALKER and PHIL BARRINGER, representing Tampa Electric Company.

DONNA HOBKIRK, representing Peoples Gas Company.

JIM MESITE, representing Florida Public Utilities.

RUSSELL BADDERS, representing Gulf Power Company.

JAMES A. McGEE, BRENDA PALMER and JAVIER PORTUONDO, representing Florida Power Corporation.

DON BABKA, DAVE HUSS and BILL FEASTER, representing Florida Power and Light Company.

PAT LEE, DALE MAILHOT and RALPH JAEGER, representing the FPSC Commission Staff.

PROCEEDINGS

MR. DEVLIN: Let's go ahead and get started. I don't know if this would be an efficient way of starting the workshop off, but we probably need to do some introduction. We have got a whole bunch of people out here, and I think we also have some folks that may be calling in on the phone, is that correct? There was one earlier. Okay. Whoever called in, could you please identify yourself?

MS. BERMUDEZ: Yes. I am Carolyn Bermudez from City Gas Company of Florida.

MS. BLOOM: This is Diane Bloom.

MR. HANDLEY: Jeff Handley from TDS Telecom.

MR. DEVLIN: I'm going to repeat those names because we didn't get them. John Handley, TDS.

MR. HANDLEY: It's Jeff Handley.

MR. DEVLIN: Jeff Handley, sorry. And we didn't get the other two, I'm sorry.

MS. BLOOM: Diane Bloom with BellSouth.

MR. DEVLIN: Diane Bloom, BellSouth.

MS. BERMUDEZ: Carolyn Bermudez, City Gas Company of Florida.

MR. DEVLIN: Carolyn Burmuda?

MS. BERMUDEZ: Bermudez.

MR. DEVLIN: Okay.

MS. POWERS: Melissa Powers with Indiantown Gas.

MR. DEVLIN: Okay. Thank you. Did somebody else just chime in? I think I heard another phone.

MR. ROFF: This is Don Roff with Deloitte and Touche.

MR. DEVLIN: Could you repeat that, please, Don.

MR. ROFF: This is Don Roff, R-O-F-F, as in Frank, with Deloitte and Touche in Dallas, Texas. I was invited to attend this conference.

MR. DEVLIN: Thank you, Don. Okay. The reason for the conference is that we are trying to understand and educated ourselves with respect to this new accounting pronouncement, 143 asset retirement obligation. We are going to go around the room a little bit, and I'm going to encourage the companies who provided comments and want to be active in our workshop today to come to this table today where we can hear you.

Don Babka, will you get up here please. Where is Javier? I know it's an awkward type setting for a workshop. It's more of a setting for a formal evidentiary hearing.

MS. LEE: What is on the table are copies of everybody's responses to the data request as well as the side-by-side comparison of those responses. I wasn't really expecting such an overwhelming attendance to talk about 143, but we are making additional copies, so if you don't get a copy, just hold on.

MR. DEVLIN: For those who are calling in, if you can mute your phones while you are not talking because we are getting some feedback, we would appreciate it. And anybody who has joined us that hasn't identified themselves, please do, as we go through there. Has there been any additional people joining us by phone in the last five minutes or so? Okay.

I would, again, ask that the companies who want to participate actively in this workshop, come to this front table. I think we have Florida Power and Light represented here, Don Babka. I'm sorry, I forgot your name.

MR. HUSS: Dave Huss.

MR. DEVLIN: Dave Huss. Javier from Power Corp. And I'm not sure --

MR. WALKER: Richard Walker from Tampa Electric.

MR. DEVLIN: Richard Walker from Tampa Electric. How about Gulf Power, do you want to participate in this? Could you come to the front table, please. And I think the only other commenter we had -- and, Pat, correct me if I'm wrong -- is Peoples Gas. Would you like to come to the front table? Okay.

Well, what I plan on doing, this is a very informal workshop, and I'm going to give the opportunity for each company who wants to participate to make some opening remarks. But some of the things that we want to address, and you probably could glean from our data request is that we need to answer the question of whether this Commission should have a rulemaking or not and whether we should adopt FAS 143 or not.

And that is a fundamental question that we would like to put on the table today. We also want to get a better feel for what kind of assets are affected by 143. In other words, what kind of assets have with them legal obligations as defined by 143. Especially looking at this concept of promissory estoppel where I have heard this theory that since cost removal is part of base rates, one could argue that there is a promise that the utilities are making that they will make good with that money and spend the money on cost removal.

And if you take that extreme position it seems to me that all assets would be subject to 143. And I would like people to address that particular position. Also, the concept if we do have assets and obligations under 143, would the assets be considered intangible assets. And that becomes germane because by virtue of the classification there may be a property tax implication.

And another question I had, and Pat and Dale can chime in at any time, if an ARO does not apply to some assets, let's say the transmission and distribution area, does that mean that we can go ahead and treat cost removal as we always do as part of depreciation, or is there some constraint that 143 would place upon us in situations where there isn't an asset retirement obligation. Those are the kind of things, at least, that I would like to see addressed. Pat and Dale can chime in.

After we have opening remarks, we will have some Q and A and sort of a free-for-all discussion. And after that is done I plan on passing out a proposed rule that we can walk through, it's just two pages long. One other question that Dale came up with this morning that I would like to address is if we elect, if the Commission elects not to adopt 143, why do we have to have any accounts? Maybe all we need to do is to have the differences between 143 and regulation and it is primarily in the cost removal area, be identified and recognized as a regulatory asset and liability and regulatory debits and credits. And maybe that is all we need to have is a recognition of those differences in those four accounts. Does that make sense? We don't know.

We're not sure if that is possible or not, but we would like some discussion on that. That would be the simplest way I would think to handle it. If we have the conclusion that we don't want to adopt 143 because we really don't want it to affect revenue requirements, we want it to be revenue neutral, okay.

Pat, Dale, before I ask for opening remarks, is there anything you want to add?

MS. LEE: No. I think you have covered everything I was concerned about.

MR. DEVLIN: Okay. If it is okay with everybody else, that is how I would like to proceed with this.

Don, would you like to make any remarks at this point?

MR. BABKA: Yes. I think that we do need a rule and it is basically for the reasons that Dale stated, so that we can record regulatory assets and liabilities for the differences between 143 and what we do for regulatory purposes. We do not believe that we should adopt 143 for setting rates. We believe that what we are doing now is the correct way to do it. Dave Huss with me has some comments on the adoption of 143. Should I go through those at this time?

MR. DEVLIN: Yes, that will be great.

MR. BABKA: And what kind of problems we are having and that sort of thing.

MR. DEVLIN: Before you do, Don, if I understand your initial comments, are you agreeing with, I guess, Dale that the only accounts we need to rely upon here are the regulatory asset and regulatory liability accounts, and we don't need to set up an intangible asset account and an ARO, I think it is, an obligation account?

MR. BABKA: We definitely need something there to allow us to use FAS 71 to report assets and liabilities under FAS 71. And that could be a very short rule to get there. I'm not sure if we need anything beyond that, except the thing that we might want to add in there is the fact that we should record any asset that results from an ARO as an intangible to try to hedge against increasing property taxes. So we might want to get that in the rule, as well.

MR. DEVLIN: Well, I think -- and Dale can speak for it -- I think the idea was that maybe we don't need to have an intangible asset or an obligation type liability account, we would just rely on the regulatory asset and regulatory liability accounts we now have in USOA just to capture any differences and then we don't get into that argument about is it intangible or intangible asset.

MR. BABKA: I think it would help us on the property tax side if the Commission did say that it should be reported as an intangible, though. I think it would be helpful to us.

MS. LEE: How does that match, though, with what 143 says, that it is not an intangible?

MR. BABKA: Well, for external reporting purposes to the SEC what we report is plant-in-service as one number and we don't break it down into the full detail as to whether it is intangible or not. So, for FCC reporting, even though it is recorded in an intangible account for regulatory purpose it still shows up in plant-in-service in external reports to the FCC. So it really doesn't matter.

MR. MAILHOT: And maybe this is a real fundamental question, you know, I don't really understand. If we said, you know, that we are not going to adopt 143, would you still have to record -- for financial reporting purposes, would you report the asset retirement cost and the asset retirement obligation, or would you report a regulatory asset and regulatory liability?

MR. BABKA: Well, what we would need is --

MR. MAILHOT: If we have a rule that says we are not adopting 143.

MR. BABKA: We would report under the SEC rules, we would have to establish it. But then on account of you not adopting it -- and there again you will have to, I think we need a rule in order for us to record these regulatory assets and liabilities. It would be like a rule on FAS 109 where we record regulatory assets and liabilities for any differences, and it comes right back to APB 11 when you get done with it. And that is basically what we believe should be done here. If we get a rule it will allow us to record those regulatory assets and liabilities for any differences. It will come right back to what we are doing today. But we would still have to implement an ARO for external reporting purposes.

MS. LEE: So you need a rule to establish the regulatory asset and liability accounts for what reason, though?

MR. BABKA: I believe that it would be best if we did, because otherwise we really have no authority to record a regulatory asset or liability unless the Commission says that we can do it.

MS. LEE: And you need that for FAS 71?

MR. BABKA: Yes. Unless somebody has a different opinion.

MR. PORTUONDO: This is Javier for Florida Power. I agree. I'm not sure if a rule is required, because that is more for the attorneys. I thought the Commission by order could create a regulatory asset and liability and that would suffice for FAS 71 purposes, but I will leave it to the attorneys.

MR. DEVLIN: I'm not going to speak for the attorneys, but if there is general applicability involved we want something to effect maybe multiple industries, we will go to rulemaking. Orders are usually company-specific.

MR. PORTUONDO: That's fine. But I would agree with Dale that I think all that is necessary here is the establishment of the accounts necessary to make sure it is revenue neutral for ratemaking purposes and still allow us to, for external reporting, to record it accordingly.

MR. DEVLIN: Well, we were trying to come up with a way of keeping this as simple as possible, and I think that was a suggestion. Maybe we don't to have a bunch to record this. What is the asset called, asset retirement costs, and another account called asset retirement obligation, and another account called accretion expense. I think I have a bunch of accounts like that that are mentioned in the FASB statement and used those accounts and account for the differences as a regulatory asset or liability, or just ignore all of that and account for the differences.

MR. PORTUONDO: I think we still need to account for it in accordance with 143 so that we have the information necessary for external reporting. And then neutralize the impact to the customer through the regulatory asset and liability. You know, I think it provides a better trail.

MR. DEVLIN: We were going down that road, quite frankly, and then this other idea came up.

MR. PORTUONDO: It's almost the same idea except you are still creating an asset, a regulatory asset or liability to neutralize, but you have a little bit more detail on what is happening with the ARO and the 143 aspect of it.

MR. DEVLIN: Okay. Thanks, Javier.

Dave, do you want to give us an overview?

MR. HUSS: Well, I was just going to go over after 143 was issued, FPL set up a bunch of teams or teams to filter each one of the different power, each one of the different functions. We have a power team, a power systems team, a nuclear team, and an HR and corporate team, and they looked at basically everything that was out there that could be construed to be a regulatory asset retirement obligation. On each one of the teams they also had a legal representative.

In the power generation area, we are still in the process of looking that area over to determine if we have asset retirement obligations. And one of the areas, as you point out, is the problem of promissory estoppel. Looking at the leases or what we have out there as far as legal contracts or anything, we don't think we have an asset retirement obligation under any legal contract to tear down one of our fossil plants.

MR. DEVLIN: Excuse the interruption. How about nuclear though, you do?

MR. HUSS: Under nuclear, because of the NRC requirements to dispose of the nuclear contaminated portion, that part we do have an asset retirement obligation for.

MR. DEVLIN: But not fossil fuel.

MR. HUSS: At this time we do not have a legal determination on the fossil fuel, and also we don't have a legal determination on the nuclear side on the part that is not covered under the NRC requirements.

MS. LEE: Which would be what, Dave, a return to Greenfield?

MR. HUSS: Bring it down to Greenfield or any of the noncontaminated portions that wouldn't necessarily be covered under the NRC.

MR. BABKA: Part of our problem with getting this accomplished is our attorneys have been tied up with the rate case and now the need hearing, so they haven't been able to shift over here to this and help us to determine whether we have promissory stuff or not. So we are kind of running behind the game.

MR. HUSS: On the transmission and distribution, most of what we looked there is we do not have any legal requirements to remove our assets. And because most of our assets are sitting on land that have perpetual right-of-ways that we don't think we have an asset retirement obligation, or if we do it cannot be calculated under the FASB. There are certain ones, though, that we do have that we are going to be looking at, and those would be some of our right-of-ways over government property, federal government property that have a 50-year or 30-year length, and over some Indian reservations. Also there are certain specific components in that area that may require us to look at them, creosote poles and equipment containing PCBs, that there is a requirement that you have to do something with it.

MR. DEVLIN: That would be in the transformers?

MR. HUSS: Yes. At this point we are still trying to come up with the legal requirements, and hopefully by the end of next month we will have those completely established and we will start moving into the measurement phase of this project.

MS. LEE: What about asbestos, asbestos removal? You have a lot of that in your fossil plants.

MR. HUSS: Right. We are also looking at asbestos removal to determine if when you shut down the fossil plant, if you have to do something specific with the asbestos, you have to take out or figure out what you are going to do with it to calculate that requirement.

MS. LEE: When I read FAS 143 there is an implication that if it is not an ARO then removal costs should be expensed as they are incurred. Do you interpret -- does FPL interpret 143 to mean that? And if not, why not.

MR. HUSS: I don't think the interpretation currently out there is that if it is not an ARO that you would immediately expense removal costs. I think they looked at it and determined that that is covered under -- if it is not ARO you can continue to record it as you are currently recording it. In other words, we record it as removal costs in our depreciation computations. Part of the -- I think part of the answer for that was because the SOP came out and was specifically addressing that, that the interpretation was that the FASB was considering that piece or their interim removal cost component of all of this in the SOP and not in the FASB.

MS. LEE: Do you agree with me that there is an implication there, though, in 143?

MR. HUSS: I will agree with you that there was that concern at one point.

MS. LEE: Okay. But you are making the determination that it wasn't intended.

MR. HUSS: Right.

MR. DEVLIN: That was one of our initial fundamental questions. Does everybody agree with FPL in that position that if there is not ARO that we can go ahead and book cost removal as part of our depreciation process, and that is what everybody plans on doing?

MR. PORTUONDO: Yes, for Florida Power.

MR. BADDERS: The same for Gulf Power.

MR. WALKER: Yes. We are still looking at it from the standpoint of potentially we have to reclassify it as a regulatory liability, so we are still looking at that issue. But continue, you know, the regulatory accounting and ratemaking as is.

MR. DEVLIN: Dave, are you done?

MR. HUSS: Yes.

MR. DEVLIN: You said legal is going to get back, did you say next month?

MR. HUSS: Hopefully we will have a final determination next month and we can also sit down and go over it with our auditors and make sure at that point that they would be in agreement with the legal interpretations we have come up with.

MS. LEE: Have your auditors at this point given you any advice or indication of how they are interpreting 143?

MR. DEVLIN: I don't think we have discussed specifics with our auditors at this point. We have had, I think, a conference with them, but I don't think we have gotten any specific areas as to which things are covered and aren't covered.

MR. DEVLIN: Would that be confidential, that document that you get from legal, which apparently legal is going to advise you on what assets are subject to 143. Would that document be confidential? We are trying to educate ourselves, and I think that might be useful if we could get access to that.

MR. FEASTER: Let us look into that. Anything that would clearly -- if it is done for our lawyers, then it would fall under the attorney/client privilege. But at the same time we appreciate that you all need information to do your job. Don't pin us down on that, but we will certainly be happy to discuss it.

MR. DEVLIN: Thanks, Bill. And it sounds like we are going to -- legal is going to give you this interpretation, you are going to sit down with the auditors, see if they have a problem. Assuming there isn't a problem with the auditors, then you are going to go through measurement and quantify. And that will be, what, in the next probably two months? What is the implementation date?

MR. HUSS: Implementation on this would be January, and for reporting the first quarter of 2003.

MR. DEVLIN: So you probably would have -- assuming everything goes smoothe -- quantitative analysis by the end of the year?

MR. HUSS: We would hope we have some type of analysis by the end of the year.

MR. DEVLIN: Thank you. Javier.

MR. PORTUONDO: I think Dave covered a lot of the information or the process that we implemented, as well. We are still trying to accumulate documentation on our fossil operations, T&D, organization as well. With regards to fossil dismantlement, I think we may be ahead of Power and Light. We have had our legal department review all the relevant orders, and they have indicated to us that they do not believe that we have an ARO associated with fossil dismantlement. And I can have Jim McGee go into the details if you would like.

MS. LEE: I would like that.

MR. McGEE: As Javier said, we are in the process of kind of finalizing this particular aspect of it concerning a legal opinion on the promissory estoppel issue. And that hasn't been finalized, but I would be happy to share with you my thoughts that have been developed so far. And as 143 makes clear, promissory estoppel really has two elements and both need to exist to have an obligation. One is a promise that could be reasonably expected to be relied on by a promisee, and the other is the actual reliance on that promise by the promisee to his or her detriment.

And, of course, the idea kind of behind promissory estoppel is that a promise without consideration normally wouldn't be enforceable. But if you have a situation where a promise has been made and, in fact, has been relied on by someone to their detriment, an obligation can be established that is sort of the exception to the general rule. So if you start out from that premise, you first need to identify the promise itself.

Now, there are instances in normal contract law where you can have an implied promise. Here there is a school of thought that I think is the soundest, that the promise that needs to be in existence for promissory estoppel is an actual promise, not an implication that the general conduct of, say, in this case a utility could infer a promise by someone who might be aware of the proceedings.

The example that is in one of the appendices to FAS 143 talks about a manager, president of a company that at a news conference indicates that because of political concerns and other issues that have arisen that the company will take action to actually dismantle a facility in a certain way, and that if members of the public and others who have heard that promise actually rely on that and change their course of conduct. An environmental group that withdraws a pending suit because of that, that those kinds of circumstances could given rise to promissory estoppel. But in that example, you have a promise, not an implied promise, you have a promise by a responsible authority from the company in question.

In the case of fossil dismantlement, while there have been extensive proceedings -- and this is sort of a fact-related issue that requires some research to ultimately go through transcripts and see what might have been said -- the review that we have made so far doesn't disclose any promise. There is a provision also in FAS 143, and to be honest with you I have not completely explored this, but there is a reference that a plan for certain action upon the retirement of a long-lived facility is, at least as that phrase concerning the plan is involved, is used in FAS 121, those plans don't give rise to an obligation under 143.

And in the context of the Commission's consideration and the utilities' participation in those considerations of fossil dismantlement, I think it is fair to characterize the information that has been provided by the utilities, at least in the case of Florida Power, as conveying the utilities' plan on fossil dismantlement -- of the dismantlement of the fossil plants upon their eventual retirement. And to the extent that it is a plan, then that language in FAS 143 that excludes plans from the situations that create an obligation tends to take that out of the picture to begin with.

I have kind of digressed in getting into that. If you are looking, though, for the existence of a promise, at least on Florida Power's part, we haven't found anything that is an indication of a promise to actually dismantle the plant. And the thing that has been at least helpful to me, as far as the Commission's action on fossil dismantlement, is to make the distinction between the actual physical dismantlement of a plant and the Commission's ratemaking treatment, or the treatment of that activity under its ratemaking authority.

And I think that is significant because I would say that even if the Commission in an order indicated an expectation that the utility would physically dismantle the plant, there would be a serious question as to whether their statutory ratemaking authority would give them the power to order the utility to physically take some action, as distinguished between their on-going ability to deal with the ratemaking consequences of the utility's action. I think that is an important distinction, and that would suggest that there is no obligation that arises directly out of the utilities' participation in the Commission's fossil dismantlement proceedings.

In terms of the other element of it, even if you assume that there was a promise on the utilities' part, define detrimental reliance on the part of a promisee. And I assume in this case the most obvious candidate for that promisee would be ratepayers who have through their rates contributed the funding of future fossil dismantlement. For there to be detrimental reliance on their part, you need to consider the consequences that could come about if the utility, in fact, after collecting funds for the dismantlement of its fossil plants, and say a particular fossil dismantlement plant, upon its retirement if the utility were to decide for its own reasons not to actually physically dismantle the plant, what would the consequences of that be from a ratepayers' standpoint.

Well, the Commission would have on-going jurisdiction from a ratemaking standpoint over that. To the extent that the ratepayers have had some detriment, it would be through the payment of those costs through its rates. The Commission would continue to have jurisdiction over the utility to ensure that whatever detriment would be cured. If there is a detriment, what I'm saying, is that it would be temporary in nature subject to ultimate cure by the Commission which would include the authority -- I'm sorry, I guess kind of the ultimate cure for the concerns from a ratepayers' standpoint would be to order a refund of the amount that had been collected for dismantlement of a plant that actually wasn't dismantled.

So when the process completes itself there is no reason to believe that there would be or even could be any detrimental reliance on the part of the ratepayer, because any detriment can be cured by the Commission through its on-going jurisdiction.

MR. DEVLIN: That assumes we have on-going jurisdiction. How about the scenario --

MR. McGEE: Over the funds?

MR. DEVLIN: Well, you're talking about dismantlement and funds are building up over time through our depreciation process and then we restructure and lose jurisdiction over the power plants. Wouldn't there be a detrimental effect to the ratepayers in that situation?

MR. McGEE: Well, that prospect has come up. I would have to say, I guess, from my own standpoint I have chosen not to really go down that rabbit trail. I don't think you would -- we would want to certainly, I don't know that the Commission would want us to determine an obligation based on a speculative outcome of some political action that could take place in the future.

It could be that the concern that you are raising right now if, in fact, deregulation, significant restructuring took place in the future, that at the time that that was implemented there could give rise to an obligation.

MR. DEVLIN: It's too speculative at this point?

MR. McGEE: Yes. The analysis that we have at least gotten into is based on the facts as they exist now.

MR. DEVLIN: Thank you, Jim. So that analysis would lead to the conclusion that very few assets would be subject to 143, if I'm reading you correctly. Very few assets, maybe just in Crystal River in your case.

MR. McGEE: Yes, the eradiated portion of the nuclear plant, I think, as indicated earlier is probably not much doubt. That is subject to dismantlement under the NRC safety jurisdiction. It's not a ratemaking exercise.

MR. DEVLIN: Thank you. Okay.

Russell, do you want to go next?

MR. BADDERS: Russell Badders on behalf of Gulf Power. We don't have, I guess, a prepared statement, but we are basically at the same point Florida Power Corp and Florida Power and Light are at. We are still conducting the review. We have the same opinion with regard to the fossil dismantlement, though I have not gone back to all of the transcripts, and that is still on-going, to make sure that we have not made a promise in some other proceedings.

At this point we don't see a lot of AROs with regard to fossil as a result of that. We are still looking at T&D, transmission and distribution, looking at the easements. We have an issue also with some of the federal licenses. They don't grant perpetual easements, they are mainly licenses for a set period of time. However, they always renew them and they obviously want to continue to receive electricity across, you know, those same waves. So that would obviously go into a determination of the ARO amount, if it is an ARO.

We have not yet rendered the legal opinion to Gulf

Power regarding any of these specific categories. We intend to do so in a fairly short period of time, basically in line with Florida Power and Light. Obviously there is a lot of work to be done once that opinion is rendered. You have to go back and do all of the accounting work and all the backup to find out how to value that.

MR. DEVLIN: I was assuming that Southern Company -- there would be some continuity among the Southern Company --

MR. BADDERS: We are working in conjunction with our sister operating companies in the Southern Company. We are not -- it is not all centralized and it is not all one group doing it for everyone. It would be hard for someone in, say, Alabama to come down and say, well, what are the Florida laws with regard to environmental requirements and other things.

MR. DEVLIN: But some of those fundamental principles that Jim was talking about, promissory estoppel, I would think that would be somewhat common for all of Southern Company.

MR. BADDERS: I believe that is the direction that it will end up. But what I want to say is we are trying to go at it from our individual direction. And we are going to come together at some point fairly soon and just see what everyone has come up with and try to mesh them together. I assume they will be very close, just like I believe all of the investor-owned utilities here at the table, we are going to come to some of the same conclusions. I think the law is going to be fairly either very clear in one direction or so not very clear that we will come to the same conclusion that we don't know or we definitely do know.

MS. LEE: Russell, just one question. You made the statement that you did not think that your fossil plants were going to constitute an ARO, but you also have asbestos in those plants. Would that --

MR. BADDERS: We are looking at that along with PCBs, creosote poles, I think you may run into a materiality issue.

MS. LEE: That was my next question.

MR. BADDERS: There is another question, how do you come up with the materiality threshold. We have not yet resolved that. I mean, there is some discussion in the FASB 143 that I guess implies materiality, a threshold of some kind. How you come up with that, there is not a lot of guidance. So that is something we are trying to figure out.

MS. LEE: Have you had discussions with your auditors at this point and have they given you any type of advice on implementation?

MR. BADDERS: I personally have not had a lot of contact with the auditors. I know there have been some discussions. As far as specifics, I do not know. With regard to the threshold, I asked that very recently and that is something we have not resolved with the auditors, so that is something that we will try to do again fairly soon, so we can continue on with our review.

MS. LEE: Thank you.

MR. DEVLIN: Javier, were you done, I'm sorry?

MR. PORTUONDO: Yes.

MR. DEVLIN: Lee, did you want to speak for TECO?

MR. WILLIS: Richard, why don't you make a statement and then I will add on.

MR. WALKER: Yes. Just a very brief statement. Richard Walker, Tampa Electric Company. We believe that the Commission should maintain its long-standing regulatory accounting and ratemaking treatment of cost of retiring property plant and equipment so that customers who receive this service and the benefit of those assets pay for the full appropriate cost of those assets. And we think the Commission should support the creation of a few subaccounts to assist in implementing 143 without really having a dramatic impact on that regulatory accounting.

And I haven't really thought of it from the standpoint that you guys were proposing, but at first blush I think we would still have to have something like an intangible account like this, and, you know, an ARO liability in regulatory assets for differences just to be able to do the external financial reporting.

MR. WILLIS: We have also undertaken a very fact-intensive review of various circumstances, orders, various statements that the company has made with respect to its assets. It is on-going; it is not complete. We have not yet identified specific assets that would meet this criteria. We agree with, basically, the legal structure of the promissory estoppel argument that was set out by Jim McGee in that we have got to have both the promise and a reliance on the promise. A detrimental reliance on the promise.

And we agree with everything you said with the possible exception of your ability to do actual refunds after the fact. You will have obviously an opportunity to address and equitably determine what should be done to the companies' rates prospectively, or to its depreciation rates, or to take very broad action that is appropriate under the circumstances. So, again, to review, our process is on-going and will be driven to a conclusion over the next several months.

MS. LEE: When do you think or at what point does TECO think that they will have a determination of a specific ARO? Maybe not the quantification, but at least you will be able to say yes or no we have one.

MR. WALKER: I think like the other companies we are all kind of focussing on scope, what is within the scope, and then worry about the measurement after we have identified what is in the scope. So I think like Lee mentioned in the next month or so we should have -- or we have got our operating groups, you know, looking at all the contracts and their operations and coming up with, you know, potential AROs and then we will go with the legal department or regulatory and accounting and evaluate those.

MS. LEE: Russell, for Gulf Power, is that the same, within the next month or so?

MR. BADDERS: Generally we should have answers to what will be the AROs within the next month. And then, of course, evaluation will be the next couple of months after that.

MS. LEE: Javier?

MR. PORTUONDO: The same for Florida Power.

MR. MAILHOT: I have a question. Does everyone agree with FPL that if there is no ARO involved that the cost removal will continue to be part of the depreciation and part of the depreciation reserve as usual? I mean, as it has in the past?

MR. PORTUONDO: Yes.

MR. WALKER: Like I say, with one caveat, it would still be part of the depreciation from a regulatory accounting standpoint, but we might have to treat it as a regulatory liability or asset.

MS. LEE: Are you reading 143 that for financial reporting purposes, if it is not an ARO the removal cost is expensed as it is incurred?

MR. WALKER: I'm sorry, say again?

MS. LEE: Are you interpreting 143 to say that for financial reporting purposes if it is not an ARO then your cost for removal will be expensed as it is incurred?

MR. WALKER: No, I would not interpret 143 saying that. Some preliminary exposure drafts on the SOP appeared in the past have said that, and I understand that is in a changing format as we go forward. That that is not finalized yet. But I think, you know, some of the Appendix B has some language about non-ARO retirement costs that rate regulated entities are recovering through rates. That the board's opinion was that should be treated as a regulatory liability.

Now, I understand some companies are saying or are taking the opinion that is not part of the statement proper. And you can infer from the statement proper that it is not addressing those AROs, so you have an interpretation to make of that.

MS. LEE: And TECO hasn't decided at this point which way they are going to interpret that?

MR. WALKER: We haven't made a final determination yet. We are kind of looking at it as if the SOP for property, plant, and equipment doesn't change, it is coming down the road, so get ready anyway.

MS. LEE: The statement, the SOP, to my understanding the last I heard, the final will be out April or May of next year for implementation of fiscal year the following January 1st, 2004. And there is quite a bit of discussion as to exactly how that is going to end up, but they are definitely proceeding, there will be something coming out. It will not come out for further comment is the last I heard. If we assume for a moment that the current draft -- I'm talking the initial draft, not the June -- I think it was June or July, not that one, but the initial draft which called for the expensing of removal cost, it seemed to me the SOP gave you -- the SOP and 143 together gives you a choose, it's either an ARO or you expense it.

What position or have you even begun to even think about the implications or what position that is going put you in at that time?

MR. WALKER: I would agree for a non-rate regulated company, but I would say for a rate-regulated company if the SOP becomes final with that position that we would still have a regulatory liability. That we should still accrue for cost removal as we currently are, and it is just the difference between, you know, ratemaking and regulatory accounting and GAAP for external reporting purposes.

MS. LEE: But at that point for financial reporting purposes you would be expensing your removal costs, correct?

MR. WALKER: Some others can jump in, too, but, not --

MS. LEE: Based on the initial draft of the SOP.

MR. WALKER: But I think as a rate-regulated entity you would still have the regulatory asset liability.

MS. LEE: On the regulatory books, right.

MR. PORTUONDO: As long as ratemaking continues as is under FAS 71 you would defer or you would continue to account both for external reporting and for ratemaking under today's accounting practice under FAS 71. You would not have to expense it.

MS. LEE: Even under the SOP?

MR. PORTUONDO: Even under the SOP. As long as we receive Commission approval to continue the practice of recovering the cost of removal through depreciation rates under FAS 71, we can, in essence, circumvent the SOP.

MS. LEE: Even though the SOP says it does apply to rate-regulated entities?

MR. PORTUONDO: I believe, and we can touch base with our auditors, as long as the Commission orders us to continue to account for it in that fashion and as long as recovery is taking place for those funds, I think under FAS 71 we would be allowed to continue our accounting practice.

MS. LEE: Then why couldn't you do that with 143?

MR. PORTUONDO: I think that is what we are asking is that we create the accounts which, in essence, reflect the same as we are doing today.

MS. LEE: I understand. Dave.

MR. HUSS: Yes, I agree. The recovery of the removal cost would still be in the depreciation, it's just it would be reported as a regulatory liability. And I think you would have to remove it from the reserve for financial reporting purposes.

MR. DEVLIN: Again, please, those who are calling in, if you could mute your phone because we're getting some feedback here. We would appreciate it.

Richard, are you done?

MR. WALKER: Yes.

MR. DEVLIN: I guess this might be a good opportunity for anybody who is calling in, I know this is awkward, hopefully you have been able to hear the conversations, and this might be an opportunity for some input. I know we have had four or five different companies represented by phone. So, does anybody want to provide input at this point, or are you just here to listen? That's fine. Okay.

(Inaudible.)

MR. DEVLIN: You're breaking up, sir.

MS. LEE: Is this Jim Mesite from Florida Public Utilities?

(Inaudible.)

MR. JAEGER: I think he said he's just going to listen.

MR. DEVLIN: That's good. Well, unfortunately, we tried to get input from the four industries we regulate, but the water industry I don't believe we got any responses. Is that right, Marshal?

MR. WILLIS: That's right.

MR. DEVLIN: The telephone companies probably don't care about what we think anymore. But how about the gas companies, I know TECO and Peoples, Peoples provided some comments, maybe we can get the gas perspective and any particular unique issues with that particular industry.

MR. WALKER: Well, I think Ms. Hobkirk is here, and Mr. Sivard is here, also, isn't he?

MS. HOBKIRK: From the distribution standpoint, we basically feel the service lines that we have is the only asset that could possibly have an ARO. And two things, immateriality, I think, is going to apply, as well -- I don't think we can measure it. So we think, if anything, we will be footnoting only.

MR. DEVLIN: Because of measurement and materiality?

MR. WALKER: And the measurement is because it is indeterminate as to when the service lines would actually retire?

MS. HOBKIRK: Right. I mean, the way you can look at it is through depreciation studies and so forth you would know the average age of your retirements, but other than that, there is really no way to --

MS. LEE: There is no clear-cut final retirement date.

MS. HOBKIRK: Right.

MR. JAEGER: Could you give your name for the court reporter?

MS. HOBKIRK: Sure. Donna Hobkirk, H-O-B-K-I-R-K.

MR. DEVLIN: Donna, is Peoples going through the same analysis that the electric companies are going through where there is a legal analysis first to identify --

MS. HOBKIRK: Actually we are compiling all the easements. Basically we have looked at it. I'm the one looking at them. And then I am compiling information and will be giving it to our legal department to review, as well. Railroad crossings, perpetual easements, and so forth.

MR. DEVLIN: Thank you. And probably around Christmas you will be done with the process where there is a legal review and maybe a review with the auditors?

MS. HOBKIRK: Hopefully before then.

MR. DEVLIN: Okay. And a measurement, some kind of a quantitative -- well, in your case, though, you are saying you might not have that.

MS. HOBKIRK: Right.

MR. DEVLIN: It may be just a footnote. Okay.

MS. LEE: Do all the companies -- do you think that the quantification of the ARO will be almost like a walk in the park compared to trying to determine whether or not one exists, or do you think that that is just opening another can of worms and that is going to be just as hair-raising?

MR. WALKER: I would say I would not categorize anything of this as a walk in the park. There are going to be some significant calculation issues for implementing initially. And, of course, then you have got the on-going review as to are your cash flows changing, you know, new AROs arising, and looking at things that you may not have been able to quantify initially that subsequently you may be able to quantify. So it is going be -- I think it would be akin to your depreciation, you know, filings periodically, like every four years for electric. You would have to be doing that same kind of process on AROs.

MS. LEE: But looking at ARO, is that going to require a review on an annual basis?

MR. WALKER: I don't know if it is real explicit. I was thinking more along the lines of like our depreciation review. As you are doing that, that is a natural time to be looking at AROs. But obviously if something changed next year, you know, you should reflect that change in your evaluation of the liability.

MS. LEE: Russell.

MR. BADDERS: I believe the same thing. I think it will be -- on a yearly basis you will have to review. I mean, when you sign the -- or when you get your financial opinion and all of that, they are going to want to update the legal opinion and everything else. So I'm sure there is an annual component to this. As far as the valuation part, I don't think it will be probably as difficult as the part of figuring out what the AROs are. As far as how much time it will take, we are hoping it doesn't take more than a couple of months that we have set out for it. That is basically how much time we will have. But we have put a lot more time into figuring out what the ARO is than two months.

MS. LEE: Javier.

MR. PORTUONDO: Pat, I think it is going to be an on-going process. I mean, as we get the construction managers, I don't know if everyone is trained to know what to look for. I mean, that is how we will identify new ones. It's a little longer process now because you are reviewing the entire company. But I would say that this is something that we will be monitoring on a regular basis. Because, like Russell said, we are going to be signing off on financial reports disclosing to the best of our knowledge what we have as AROs.

MS. LEE: And 143 doesn't specifically say how often, it just kind of says when it changes you need to reflect it, right?

MR. PORTUONDO: Right. But the key here is you have got the company signing off on financial statements, so we want to be conservative and make sure we have looked at everything carefully.

MS. LEE: Dave.

MR. MESITE: Pat, am I still breaking up?

MS. LEE: Not quite as bad, but, yes.

MR. MESITE: Okay. I will defer.

MS. LEE: No, you're better.

MR. MESITE: Okay. I was just wondering what does people think of the outside auditors, their requirements are going to be for satisfaction of all of this?

MS. LEE: Hold on a minute, Jim. This is Jim Mesite from Florida Public Utilities.

Jim, could you ask that question again?

MR. MESITE: I was just wondering what people's feeling are on what will be the requirements of outside auditors when they sign off on the financials, et cetera?

MS. LEE: What will be required from the outside auditors?

MR. MESITE: Well, what will they be -- you're wondering whether or not this will be a two-year, or three-year, or four-year type of review. They are liable to do this every time they review a quarterly statement. Does anybody see that being a problem?

MR. BARRINGER: This is Phil Barringer with Tampa Electric. One of the things that we have to remember that we really are going to have to be looking at this all the time. I mean, we are all putting in assets every day and we are retiring assets every day, and we are entering agreements, contracts, and there is environmental regulations, as well.

MR. MESITE: Exactly.

MR. BARRINGER: So I think you are going to be reviewing at least new stuff all the time, and you're going to be having to look at where you are from your past experience with what you have already set up. So I don't know whether it will be as robust as this first time when we have to set up everything and look at everything, but I don't think we are ever going to get away from not kind of going through at least quarterly with our auditors what we have done and where we are at each point in time.

MR. MESITE: Thank you.

MS. LEE: Any other comment on that question for Florida Public?

MS. PALMER: This is Brenda Palmer from Florida Power. And our auditors are D&T, and we have met with them periodically through our process just to make sure that they agree with our processes and what we are looking at. And we haven't got a whole lot of feedback, but they are going to, number one, rely heavily on management, as Javier said, to sign off on the existence and the disclosure of AROs. But they are -- like I said, we are working with them currently to make sure if we are sampling, if our sample size is correct and that sort of thing. So, I think they are still learning, as well as other people have indicated. We haven't got a whole lot of information out of them, so that is going to be a continual process, as well.

MS. LEE: Dave.

MR. HUSS: I agree. I think we are going to have to look at it annually at least and probably as the contracts are calling in, but you are going to have to make some determination for your auditors at the end of each year that you haven't had any material changes in the asset retirement obligations, and you are going to have to continue to depreciate the assets and look at what you have added to your plant. You know, if that is causing any asset retirement obligations.

You know, in the nuclear side if you had any changes to your plant that you may have to record an asset retirement obligation because you pulled something out. So you're going to have to look at it at least annually.

MS. LEE: Donna, do you have anything you want to add?

MS. HOBKIRK: Well, I don't think we are going to have any specific AROs. Hopefully our service lines will never reach the point that it becomes a material issue, but it is something we will have to continually monitor, and also something to give the auditors reassurance that nothing has changed. I think it is basically a triggering event is when you would have to readdress things that we are covering right now in booking, and then just continue to make your entries on a monthly basis.

MS. LEE: Jim, does that help?

MR. MESITE: Yes. I'm getting a big feedback. I should probably call back in. Yes, I was just wondering what their feelings were. Thank you.

MR. DEVLIN: Okay. I think at this point what we would like to do is pass out our first shot at a rule, because I think we all agree a rule is probably in order here to justify, if you will, any regulatory asset or liability type of accounting. Christine, do you have copies? I don't even have a copy of the latest draft. And maybe we could just spend a few minutes and walk through it. And I know you are getting hit cold with it, so take it back with you and maybe we can have some further dialogue on it. But I have a feeling this is the road we are going to go down is rulemaking, and the rule would be general for all industries. Why don't we get them distributed and spend five minutes reading them and then we will talk about it.

MS. LEE: I'm going to pass around a sign-up sheet. If you will put your name, phone number, and who you are affiliated with.

(Off the record.)

MR. DEVLIN: We are not sure if this is the right approach or not, because 143 -- I don't know how many pages FAS 143 is, and we kind of picked and choose some wording out of that, and it is debatable whether we need this much detail or not. But we are very open-minded. Our main goals that we are trying to accomplish is to ensure that 143 is revenue neutral, and maybe provide some subaccounts so we have a good tracking of the differences between 143 accounting and regulatory accounting, and that might be our main purposes with this rulemaking.

So, again, let's just walk through it real quickly, go around the table. Paragraph 1. That is our main goal here is to provide a position that the Commission desires to have this be revenue neutral and just references the accounting statement. Anybody have any input for Paragraph 1 at this time? Okay. Anybody have any input on the general approach that we are taking at this juncture?

MR. PORTUONDO: I think it is a very good start. I would just like the opportunity to go back and look at it more closely and make sure that we don't have any disagreements. But I think it is has got the aspects that we were looking for based on the responses to Pat's questions.

MR. DEVLIN: Well, maybe that would be the most efficient thing to do at this point instead of -- we can conclude the workshop here shortly, and then have the schedule set up for feedback since this seems to be the conversation piece now. Does that seem a more reasonable use of our time here today?

MS. LEE: Two weeks. Will that be sufficient?

MR. DEVLIN: And, again, e-mail Pat with your suggestions.

MR. PORTUONDO: If we could do it the first week of October, because I'm out of pocket the next two weeks.

MS. LEE: Next week is the last week in September, the first week is the week after that. You want it the second week of October?

MR. PORTUONDO: No, no. The first week, the end of the first week of October would be what I prefer.

MS. LEE: Yes, which would be the 11th. Javier, do you have a date? This is just for comments. I think if you have seen anything that is just glaringly disconcerting at this point, we would like to go ahead and talk about it today. But take it home, look at it, talk to your people, and then e-mail comments on the rule, on the rule draft within the next couple of weeks. What date would work well for you?

MR. PORTUONDO: October 7th.

MS. LEE: October the 7th, which is in on a Monday.

MR. HUSS: You want comments back before October 7th, right?

MS. LEE: By October the 7th.

MR. DEVLIN: We are not sure where we will go from there, but what we might do is keep it informal. It doesn't sound like this is controversial. Some of our rulemakings can be very controversial. I don't think this one is. We probably could have different iterations and just send out maybe another one after October 7th, and handle it that way before we got to the Commission.

But I'm just thinking off the top of my head. I doubt, because of bureaucracy that we deal with, that we will have a final rule by the end of the year, but if not it would be the first quarter of next year. Okay. So we are all set with October 7th. And we will let you know what our next step is after that. We will let you know whether we are ready to propose a rule or not shortly after that. Again, for those who are on the phone, e-mail Pat and we will get you a copy of this in the next day or so, so you can stay on the same track.

You have something?

MS. LEE: Just on your initial read through of the draft, was there anything glaringly disconcerting to you?

Good.

MR. DEVLIN: Okay. I think we are winding down. I appreciate, you know, it has been at least helpful to me, because looking at this accounting statement of June, I guess, it was very overwhelming, but I think when the dust settles it may not be -- well, at least from our perspective it may not be a big deal. It sounds like it is from the utilities' perspective.

And the only thing I have to say on that point, if you are fussing about all the work this has created, remember the genesis of this project. Are you familiar? I think it started with the electric industry and EEI wanting FASB to look into recognition of liabilities for nuclear decommissioning. And so if you want to blame somebody, blame your friends in Washington. Does anybody else have something they want to add before we conclude?

MS. LEE: Just one more thing. If you get home and you think of anything else you would like to add to the comments you have already made today on 143, feel free to send me an e-mail.

(The workshop concluded at 10:40 a.m.)

STATE OF FLORIDA)

: CERTIFICATE OF REPORTER

COUNTY OF LEON)

I, JANE FAUROT, RPR, Chief, Office of Hearing Reporter Services, FPSC Division of Commission Clerk and Administrative Services, do hereby certify that the foregoing proceeding was heard at the time and place herein stated.

IT IS FURTHER CERTIFIED that I stenographically reported the said proceedings; that the same has been transcribed under my direct supervision; and that this transcript constitutes a true transcription of my notes of said proceedings.

I FURTHER CERTIFY that I am not a relative, employee, attorney or counsel of any of the parties, nor am I a relative or employee of any of the parties' attorney or counsel connected with the action, nor am I financially interested in the action.

DATED THIS 26TH DAY OF SEPTEMBER, 2002.

Jane Faurot

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